

recovery of the unconstitutional Federal tax will be treated as an offset to the deduction allowed therefor in a prior taxable year (or years). The taxpayer's return for the prior taxable year (or years) with respect to which the statutory period for the assessment of a deficiency has expired will be opened only for the purpose of reducing the deduction allowed for the unconstitutional Federal tax and assessing the resulting deficiency or deficiencies, if any. (An election under section 1346 may be made only if the taxpayer consents in writing to such assessment. See paragraph (b) of this section.) No other adjustment will be allowed.

(3) If the disallowance of the deduction allowed in respect of a prior taxable year results in a deficiency for that year, the deficiency will be assessed against the taxpayer within the period agreed upon between the taxpayer and the district director with respect to the taxable year of the prior deduction, even though the statutory period for the assessment may have expired prior to the filing of the consent.

(4) If a taxpayer does not elect under the provisions of section 1346 and this section to exclude the tax recovered from gross income in the taxable year of recovery, the tax recovered shall, from the standpoint of its inclusion in or exclusion from gross income, be governed by the provisions of section 111.

(b) *Manner of making election.* (1) The election provided for in paragraph (a) of this section shall be made by the taxpayer filing a statement in writing that he elects to treat the deduction allowed in a prior taxable year for the unconstitutional tax as not having been allowable for such taxable year. Such a statement must be filed with the taxpayer's return for the taxable year in which the recovery of the unconstitutional tax or taxes occurs. No other method of making the election is permitted. The statement of election must contain a description of the tax recovered, the date of recovery, the taxable year in which paid or accrued, and the taxable year for which the deduction was allowed. The statement of election must also contain a statement signifying the taxpayer's consent (i) to treat the deduction or portion thereof allowed in a prior year with respect to

the unconstitutional tax as not allowable for that year and (ii) to the assessment, in respect of the taxable year for which the deduction was allowed, of any deficiency, together with interest thereon as provided by law, resulting from disallowance of the deduction or portion thereof, even though the statutory period for the assessment of any such deficiency may have expired before the filing of such consent.

(2) The term *recovery*, as used in this section, includes not only refund or credit of taxes previously paid, but also the cancellation of a purported tax liability which was accrued and deducted for a prior taxable year but never actually paid.

[T.D. 6500, 25 FR 12052, Nov. 26, 1960]

§ 1.1347-1 Tax on certain amounts received from the United States.

(a) In the case of an amount (other than interest) received from the United States by an individual under a claim involving acquisition of property and remaining unpaid for more than 15 years, the tax (or, in the case of taxable years beginning before January 1, 1971, the surtax) imposed by section 1 attributable to such amount shall not exceed 33 percent of the amount (other than interest) so received (30 percent for taxable years beginning before January 1, 1971). For the purpose of section 1347 and this section, such amount shall not include any amount received from the United States which constitutes interest, whether such interest was included in the claim or in any judgment thereon or has accrued on such judgment. Section 1347 and this section shall only apply with respect to amounts received under a claim filed with the United States before January 1, 1958.

(b) To determine the application of section 1347 and this section to a particular amount, the taxpayer shall first compute the tax (or, in the case of taxable years beginning before January 1, 1971, the surtax) imposed by section 1 upon his entire taxable income, including the amount specified in paragraph (a) of this section, without regard to the limitation on tax provided in section 1347. The proportion of the tax (or surtax), so computed, indicated by the

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ratio which the taxpayer's taxable income attributable to the amount specified in paragraph (a) of this section, computed as prescribed in paragraph (c) of this section, bears to his total taxable income, is the portion of the tax (or surtax) attributable to such amount. If this portion of the tax (or surtax) exceeds 33 percent (30 percent for taxable years beginning before January 1, 1971) of the amount specified in paragraph (a) of this section, that portion of the tax (or surtax) shall be reduced to 33 percent (or 30 percent) of such amount.

(c) In determining the portion of the taxable income attributable to any amount specified in paragraph (a) of this section, the taxpayer shall allocate to such amount received and to the gross income derived from all other sources, the expenses, losses, and other deductions properly attributable thereto, and shall apply any general expenses, losses, and other deductions (which cannot be properly apportioned otherwise) ratably to the gross income from all sources. The amount specified in paragraph (a) of this section, less the deductions properly attributable thereto and less its proportion of any general deductions, shall be the taxable income attributable to such amount. The taxpayer shall submit with his return a statement fully explaining the manner in which such expenses, losses, and deductions are allocated or apportioned.

[T.D. 6500, 25 FR 12052, Nov. 26, 1960, as amended by T.D. 7117, 36 FR 9422, May 25, 1971; 36 FR 11434, June 12, 1971]

§ 1.1348-1 Fifty-percent maximum tax on earned income.

Section 1348 provides generally that for taxable years beginning after December 31, 1971, the maximum tax rate applicable to the earned taxable income of an individual, estate, or trust is not to exceed 50 percent. In the case of an estate or trust, earned income includes only amounts which constitute income in respect of a decedent within § 1.1348-3(a)(4). For taxable years beginning after December 31, 1970, and before January 1, 1972, the maximum rate is 60 percent. Section 1348 does not apply if the taxpayer chooses the benefits of income averaging under sections 1301

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through 1305. Section 1348 does not apply to a married individual who does not file a joint return with his spouse for the taxable year. For purposes of section 1348, an individual's marital status shall be determined under section 153 and the regulations thereunder.

[T.D. 7446, 41 FR 55337, Dec. 20, 1976]

§ 1.1348-2 Computation of the fifty-percent maximum tax on earned income.

(a) *Computation of tax for taxable years beginning after 1971.* If, for a taxable year beginning after December 31, 1971, an individual has earned taxable income (as defined in paragraph (d) of this section) which exceeds the applicable amount in column (1) of table A, the tax imposed by section 1 for such year shall be the sum of:

(1) The applicable amount in column (2) of table A.

(2) 50 percent of the amount by which earned taxable income exceeds the applicable amount in column (1) of table A, and

(3) The amount by which the tax imposed by chapter 1 on the entire taxable income exceeds a tax so computed on earned taxable income, such computations to be made without regard to section 1348 or 1301.

TABLE A

Status	(1)	(2)
Married individuals filing joint returns and surviving spouses	\$52,000	\$18,060
Heads of households	38,000	12,240
Unmarried individuals other than surviving spouses and heads of households	38,000	13,290
Trusts and estates	26,000	9,030

(b) *Computation of tax for taxable years beginning in 1971.* If, for a taxable year beginning after December 31, 1970, and before January 1, 1972, an individual has earned taxable income (as defined in paragraph (d) of this section) which exceeds the applicable amount in column (1) of table B, the tax imposed by section 1 for such year shall be the sum of:

(1) The applicable amount in column (2) of table B,